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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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OCT - 4 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
Petition of Public Utilities	)	
Commission, State of Hawaii,	)	
for Authority to Extend its Rate	)	
Regulation of Commercial Mobile	)	
Radio Services in the State of Hawaii	)	PR Docket No. 94-103
Petition to Extend State Authority	)	
over Rate and Entry Regulation of	)	
All Commercial Mobile Radio Services	)	
filed by the Arizona Corporation	)	
Commission	)	PR Docket No. 94-104
Petition of the State of California	)	
and the Public Utilities Commission	)	
of the State of California to	)	
Retain Regulatory Authority over	)	
Intrastate Cellular Service Rates	)	PR Docket No. 94-105
Petition of the Connecticut	)	
Department of Public Utility	)	
Control to Retain Regulatory Control	)	
of the Rates of Wholesale Cellular	)	
Service Providers in the State of	)	
Connecticut	)	PR Docket No. 94-106
Petition on Behalf of the Louisiana	)	
Public Service Commission for	)	
Authority to Retain Existing	)	
Jurisdiction over Commercial Mobile	)	
Radio Services Offered Within the	)	
State of Louisiana	)	PR Docket No. 94-107
Petition to Extend Rate Regulation	)	
Filed by the New York State Public	)	
Service Commission	)	PR Docket No. 94-108
Statement of the Public Utilities	)	
Commission of Ohio's Intention	)	
to Preserve its Right for Future	)	
Rate and Market Entry Regulation	)	
Of Commercial Mobile Radio Services	)	PR Docket No. 94-109
State Petition for Authority to	)	
Maintain Current Regulation of	)	
Rates and Market Entry filed by	)	
the Public Service Commission of	)	
Wyoming	)	PR Docket No. 94-110

To: The Commission

**REPLY COMMENTS OF Pagemart, Inc.**

PageMart, Inc. ("PageMart"), by its attorneys,  
hereby responds to the Comments filed in the above-captioned

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List A B C D E

proceedings. PageMart is a medium-sized, innovative paging company that provides low-cost, nationwide services.

PageMart holds both Part 22 radio common carrier ("RCC") and Part 90 private carrier ("PCP") licenses for paging services throughout the United States, including PCP licenses for which it qualifies for nationwide exclusivity. In these proceedings, the Commission requests comments on the petitions of eight states to retain regulatory authority over mobile radio service providers, pursuant to the Omnibus Budget Reconciliation Act of 1993.<sup>1/</sup>

Numerous parties filed comments on these state petitions. Many of these commenters pointed out that the requested relief, if granted, might permit regulation of the rates or entry of paging service providers.<sup>2/</sup> PageMart supports the views of those commenters that argue that the continued regulation of paging services is not justified, and that, to the extent the state petitions seek authority to continue or to initiate such regulation, such requests should be denied.

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<sup>1/</sup> Pub. L. No. 103-66, Title VI, § 6002(b)(2), 107 Stat. 312, 392 (1993) (the "Budget Act"), amending Section 332 (c) (3) of the Communications Act.

<sup>2/</sup> See, e.g., Comments of Airtouch Paging; Comments of PageNet; Comments of Mobile Telecommunication Technologies Corp.; Comments of BellSouth Corporation.

I. STATES HAVE NOT DEMONSTRATED THE NEED TO REGULATE PAGING.

Under the Budget Act, a state may continue its rate regulation (subject to FCC approval) of intrastate mobile radio service providers only where it has provided evidence that market conditions fail to protect subscribers from unreasonable, unjust or unduly discriminatory rates, and that continued state regulation is necessary.<sup>3/</sup> The Commission has set forth specific examples of the kind of evidence, analysis and information regarding CMRS services that is relevant to the determination of whether state regulation of these services is warranted.<sup>4/</sup>

The statutory burden of proof imposed by the Budget Act has not been met with regard to paging services. Indeed, no state attempted even the most rudimentary analysis of the competitive status of paging. As PageNet notes in its Comments at 5-6, "apart from listing the number and/or identity of non-cellular RCC carriers in a particular State and occasionally providing information with respect to their revenues and number of subscribers, the States have

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<sup>3/</sup> Section 332(c)(3)(A) of the Communications Act of 1934, as amended, enumerates two specific circumstances under which a state may continue to regulate CMRS: (1) where market conditions for CMRS fail to protect subscribers from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or (2) where the CMRS replaces landline telephone exchange service for a substantial portion of such service in the state. The Budget Act thus creates a presumption in favor of preemption of state and local rate regulation of CMRS.

<sup>4/</sup> See 47 C.F.R. §§ 20.13(a)(2); 20.13(a)(4); 20.13(b)(1).

provided virtually no information to meet their burden." Moreover, as PageNet notes in its Comments at 4, the "type of information submitted does not reflect any consumer protection need warranting additional or continued State regulation."

Instead, it is clear from the petitions that the primary concern of most states is the competitiveness of the cellular market.<sup>5/</sup> Because PageMart does not offer cellular service, it does not comment on this aspect of the state petitions, except to note that any regulatory authority granted to the states should be limited to the regulation of cellular providers, and not applied to CMRS providers generally, or to paging providers specifically. Any extension of such authority to paging would be unwarranted because the states have not met their statutory burden of proof.

## II. PAGING IS A COMPETITIVE INDUSTRY THAT DOES NOT NEED STATE REGULATION.

Paging is a rapidly evolving industry characterized by relatively low barriers to entry, numerous competitors and vigorous price competition. As noted in the Comments of the Personal Communications Industry Association at 9, there are more than 2,400 paging providers in the U.S.; the vast majority of these are small companies with fewer than 1,000 customers or mid-sized companies with a few

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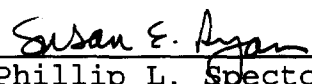
<sup>5/</sup> Indeed, several states use the term CMRS interchangeably with cellular. See, e.g., Petition of the Arizona Corporation Commission.

thousand pagers in service. No one paging company controls more than 12% of the market. The Commission has recognized the competitive nature of paging in its earlier proceedings implementing the "regulatory treatment" provisions of the Budget Act, noting that "[t]he combination of high capacity, large numbers of service providers, ease of market entry, and ease of changing service providers results in paging being a very competitive segment of the mobile communications market."<sup>6/</sup>

PageMart agrees with those commenters that argue that, to the extent states petition to regulate paging services, those petitions should be denied. Paging is a highly competitive, dynamic industry. The states have not met their burden of demonstrating that consumers need regulatory protection to ensure just and reasonable paging rates.

Respectfully submitted,

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October 4, 1994

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<sup>6/</sup> See Second Report and Order, Regulatory Treatment of Mobile Services, 9 F.C.C.Rcd. 1411, 1468 (1994).

CERTIFICATE OF SERVICE

I, Ginger S. Pribble, hereby certify that on this 4th day of October 1994, a copy of the foregoing Reply Comments of PageMart, Inc. was served by first class, postage prepaid mail or hand delivery, on the following parties:

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